

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

RICHARD B. ROPER, Receiver,

§

§

Garnishor,

§

V.

§

§

FIFTH THIRD BANK

§

§

Civil Action No. _____

Garnishee,

§

V.

§

§

JANE C. CAITO

§

§

Judgment Debtor/Defendant

§

APPLICATION FOR WRIT OF GARNISHMENT

TO THE HONORABLE COURT:

Plaintiff, Richard B. Roper, Receiver files this application for Writ of Garnishment pursuant to Federal Rules of Civil Procedure 64 and 69, Texas Rule of Civil Procedure 658, and Chapter 63 of the Texas Civil Practice & Remedies Code, and respectfully shows the Court as follows:

I. PARTIES

Plaintiff in Garnishment is Richard B. Roper, Receiver ("**Garnishor**"). Richard B. Roper, Receiver is a judgment creditor of Jane C. Caito (the "**Judgment Debtor**").

Fifth Third Bank ("**Garnishee**") is a financial institution doing business in the state of Texas and may be served by delivering the writ to its registered agent. Upon information and belief, Garnishee is a federally chartered national bank with its principal place of business in 38 Fountain Square Plaza, Cincinnati, OH 45263 USA.

Richard B. Roper, Receiver believes that Garnishee is indebted to Judgment Debtor because one or more accounts at Garnishee are in the name of the Judgment Debtor.

Judgment Debtor is Jane C. Caito, who is an individual residing in Cleveland, Ohio. Upon issuance and service of the writ upon the Garnishee, Judgment Debtor may be served at her residence located in Cleveland, Ohio.

II. JURISDICTION AND VENUE

This court has jurisdiction over this matter pursuant to 28 U.S.C. §1332(a)(1) because there is complete diversity between the parties and the amount in controversy exceeds \$75,000, excluding interests and costs.

Venue is proper in this Court because the original proceeding in which judgment was entered in favor of Garnishor and against Judgment Debtor was docketed in this Court in Cause No. 7:11-cv-00031-0; Roper v. Mitchell Abbott et al, in the Northern District of Texas, Wichita Falls Division.

III. ISSUANCE OF WRIT OF GARNISHMENT

On March 29, 2012, Richard B. Roper, Receiver obtained a judgment against Jane C. Caito for the sum of a principal balance of \$84,000.00 plus post-judgment interest at a rate of 0.12% per annum. A true and correct copy of the Final Judgment is attached to the Affidavit of Richard B. Roper, attached hereto as **Exhibit A** (“**Richard B. Roper Affidavit**”), and incorporated herein by reference. See Richard B. Roper Affidavit at ¶3, Ex. A-1. As of April 13, 2015 the total judgment amount is \$84,000.00.

Said judgment is valid and subsisting and remains unsatisfied. See Richard B. Roper Affidavit at ¶4.

Judgment Debtor does not possess, within Richard B. Roper, Receiver’s knowledge, any property in Texas subject to execution sufficient to satisfy said judgment. See Richard B. Roper Affidavit at ¶5.

This garnishment is not sought to injure or harass either the Judgment Debtor or the Garnishee. See Richard B. Roper Affidavit at ¶6.

Richard B. Roper, Receiver has reason to believe, and does believe, that Garnishee is indebted to the Judgment Debtor by reason of one or more bank accounts, in the name of Jane C. Caito. *See* Richard B. Roper Affidavit at ¶7.

Pursuant to Federal Rule of Civil Procedure 64, the remedies of the State of Texas are available for the seizure of property for the purpose of securing satisfaction of the judgment. The applicable statutes and rules for issuance of a writ of garnishment under Texas law are set forth in Texas Civil Practices & Remedies Code §§63.001, *et seq.*

Richard B. Roper, Receiver is entitled to the issuance of a writ of garnishment on the grounds stated above and in the attached affidavit of Richard B. Roper.

IV. CONCLUSION

WHEREFORE, Richard B. Roper, Receiver respectfully asks that a Writ of Garnishment be issued and served upon the said Garnishee and that Richard B. Roper, Receiver have judgment against Garnishee to satisfy the judgment against Judgment Debtor, as provided by law, together with all costs of court incurred in this proceeding, and such other and further relief to which Richard B. Roper, Receiver may be justly entitled.

DATED: July 21, 2015

Respectfully Submitted,
Lam, Lyn & Philip, P.C.

By: /s/ **Radha Thiagarajan**

Kurt L. Lyn

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